

150. In contrast, an approach toward MTE owners that specifically provides for the level of compensation mandated by the Fifth Amendment would appear to avoid these concerns; the government would have no liability for Tucker Act claims since the regulation would be structured to entitle the MTE owner to “just compensation” under a nondiscrimination policy, and the regime would not constitute a revenue raising scheme since the competing provider would, on a voluntary basis, pay no more than the value of the access it has received. With the courts having the final say in assessing what constitutes the constitutionally required level of compensation, there should be no “identifiable class of cases in which application of [the] statute will necessarily constitute a taking,” *id.*, and therefore no basis for applying the policy of avoidance. We seek comment on this analysis.

3. Potential Scope of Application

151. As discussed above, if our concerns regarding the ability of premises owners to discriminate unreasonably among competing telecommunications service providers are not adequately resolved without regulatory intervention, we are prepared to consider adopting a nondiscriminatory access rule, in the form either of a direct regulation of property owners³³⁷ or of a regulation of common carrier practices. To that end, we examine and seek further comment below on the potential scope of such an obligation.

152. We acknowledge that there may be some entities for which the burdens arising out of a nondiscriminatory access rule would outweigh the benefits to competition and customer choice.³³⁸ There also may be situations that the Commission should exempt from a nondiscriminatory access rule for other reasons. For example, should any Commission regulations differentiate between commercial and residential buildings? That is, if we were to adopt a nondiscriminatory access rule, should we exempt residential buildings from whatever regulation we ultimately impose for the same reasons, discussed *infra* Section V.B., that we may distinguish between commercial and residential premises in the context of exclusive contracts? In addition, should a nondiscriminatory access provision be triggered only if a building meets some threshold number of square feet, number of tenants, or gross rental revenue? The states that have promulgated nondiscriminatory access requirements often exempt multitenant buildings that have fewer than some minimum threshold of units.³³⁹ Also, should we exempt buildings that are owned by state or local governments? For example, is a nondiscriminatory access rule appropriate in

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Atlantic, 24 F.3d at 1445 (quoting *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 128 n.5 (1985)). The avoidance canon, however, is not applicable to situations in which it is only possible that a statute or regulation might effect a taking. *National Mining Association v. Babbitt*, 172 F.3d 906 (D.C. Cir. 1999) (refusing to apply the avoidance canon to interpret the Energy Policy Act to mandate an exemption in the Secretary of the Interior’s regulations, even though it was possible that a court might determine in a particular case that application of the regulations had caused a regulatory taking).

³³⁷ In response to the *Competitive Networks NPRM*, 14 FCC Rcd at 12673, we have received extensive comment on the legal issues related to potential imposition of a non-discriminatory access requirement on building owners. Although we do not resolve these legal issues today, we see no need for further comment on these questions, except to the extent expressly discussed above.

³³⁸ See *Competitive Networks NPRM*, 14 FCC Rcd at 12706 (asking commenters whether “we should limit the scope of any obligation in order to avoid imposing unreasonable regulatory burdens on building owners”).

³³⁹ See, e.g., *Massachusetts Nondiscriminatory Access Order* (generally exempting residential multidwelling units with fewer than four units); Conn. Gen. Stat. Ann. § 16-2471 (1997) (generally requiring minimum threshold of three units); 16 Texas Admin. Code § 26.129(b)(1)(C) (Sept. 7, 2000) (Texas law applies, *inter alia*, to “[p]ublic or private property owners of commercially operated residential property with four or more dwelling units . . .”).

either public housing or at municipal airports, in which a local government often leases space to various commercial retail establishments? Should we exempt federal buildings?³⁴⁰ We seek comment on these issues.

153. For some buildings, other factors may be present that would warrant exempting a particular building or tenancy from a nondiscriminatory access rule. For example, the state of Massachusetts exempts “all tenancies of 12 months or less in duration and transient facilities, such as hotels, rooming houses, nursing homes and [facilities] serviced by payphones.”³⁴¹ We also note that the state of Texas has exempted “institutions of higher education” from its requirements, and, thus, college dorms appear to be beyond the scope of Texas’ nondiscrimination requirement. In addition, representatives of federal, state, and local governments argue that buildings which they own or control should not be subject to any nondiscriminatory access requirements.³⁴² We seek comment on what circumstances would warrant exempting a building from a nondiscriminatory access requirement, including whether we should adopt exemptions similar to those described above.

154. In addition, as we noted earlier, since the *Competitive Networks NPRM* was adopted, a new type of local telecommunications provider has emerged. These carriers, which are often referred to as “building LECs” or “BLECs,”³⁴³ typically own telecommunications facilities only within MTEs. A building LEC provides telecommunications services to tenants by interconnecting with another LEC that has facilities outside the building. The nature of the relationship between the building owner and the building LEC is often different, however, from the typical competitive LEC/building owner relationship in that the building LEC agrees to give the building owner equity, or has agreed to share a percentage of the telecommunications revenues received in a particular building or group of buildings, in exchange for building access. Indeed, in some instances, consortiums of real estate firms have been the founding members of building LECs.³⁴⁴

³⁴⁰ We note that the Conference Report associated with H.R. 4475, which was signed into law on October 23, 2000, includes the following language: “The conferees direct the executive branch [to] identify building telecommunications access barriers and take necessary steps to ensure that telecommunications providers are given fair and reasonable access to provide service to Federal agencies in buildings where the Federal government is the owner or tenant.” H.R. Conf. Rep. No. 106-940 at 161.

³⁴¹ *Massachusetts Nondiscriminatory Access Order* at 18.

³⁴² See LSGAC Recommendation No. 22.

³⁴³ See Letter from Kathleen Q. Abernathy, Vice President, Broadband Office, to Magalie Roman Salas, Secretary, FCC, dated May 17, 2000 (enclosing news article entitled “Birth of a BLEC: Service Providers jump at Chance to Win Over MTU [multi-tenant unit] Audience”).

³⁴⁴ For example, BroadBand Office, one such competitive LEC, was founded by the following eight real estate companies: Carr America Realty Corporation, Crescent Real Estate Equities Company, Duke-Weeks Realty Corporation, Equity Office Properties Trust, Highwoods Properties, Inc., the Hines Organization, Mack-Cali Realty Corporation, and Spieker Properties, Inc., along with the venture capital firm of Kleiner Perkins Caufield and Byers. See Letter from Kathleen Q. Abernathy, Vice President, Broadband Office, to Magalie Roman Salas, Secretary, FCC, dated April 13, 2000 (enclosing handout from April 13, 2000 *ex parte* meeting with Commercial Wireless Division staff). Another example is the building LEC OnSite Access, Inc., for which Reckson Service Industries, an affiliate of the real estate investment trust Reckson Associates Realty, is a principal financial backer. Letter from Joseph M. Sandri, Jr., WinStar Communications, Inc., to Magalie Roman Salas, Secretary, FCC, dated November 22, 1999 (noting that, at some point, Reckson held a 42% equity stake in OnSite access).

155. Building LECs may promote the goals of the 1996 Act by bringing competition and advanced services to MTEs that otherwise might not see competitive providers for quite some time. At the same time, we are concerned that these building LEC relationships may create incentives for unreasonable discrimination by building owners and thus undermine competition in MTEs.³⁴⁵ We therefore seek to create a record on these new developments in order to determine their effect on the market and what, if any, particularized regulation of building owners in these contexts may be appropriate. Specifically, we seek comment on: (1) the types of services offered by building LECs; (2) the nature and scope of the relationships between building owners or real estate investment trusts and the competitive LECs in which they maintain a financial interest; and (3) whether and how these agreements affect competition for local telecommunications services.

4. Potential Implementation Issues

156. If we were to adopt a nondiscriminatory access rule, a number of implementation issues would arise. We seek to develop a fuller record on these issues. Specifically, we seek comment regarding how the Commission would define nondiscriminatory access for all providers given the significant variations in the type and extent of access required by each provider. For example, wireless technologies require access to the roof or other location suitable for placing an antenna, whereas wireline technologies typically enter the building at or below ground and interconnect to the building wiring at a basement or ground floor equipment closet. The access required may also vary depending on the type of services required by a particular end user. In addition, we seek comment on how a nondiscriminatory access rule could be tailored to address the ramifications of requests for different types of access on building management. In particular, we are interested in comments addressing the issues of accommodating building space limitations and ensuring building safety and security.

157. If the Commission were to adopt a nondiscriminatory access rule, we seek comment on whether such an obligation should be triggered only if a tenant requests a particular carrier. Although we sought comment on this issue in the *Competitive Networks NPRM*,³⁴⁶ our current record is insufficient on this issue. We note again that the nondiscriminatory access regulations in states of Texas and Connecticut contain such provisions.³⁴⁷ In addition, if we adopt a rule that is triggered by a tenant request, we seek comment on how we would ascertain whether any particular request is a bona fide request for service, and not merely a sham arrangement to get a particular provider into an MTE.

158. We further seek comment on how any nondiscriminatory access rule should be enforced. For example, commenters should consider whether aggrieved parties should invoke the Commission's general procedures for complaints against common carriers,³⁴⁸ or whether we should implement some special complaint procedure.³⁴⁹ Parties should also consider the advisability of alternative dispute resolution procedures, as well as whether the states should have a role in the enforcement process. We particularly invite comment regarding the burdens that any enforcement scheme would impose on

³⁴⁵ See Letter from Robert J. Aamoth, Counsel for Edge Connections, Inc., to Magalie Roman Salas, Secretary, FCC, dated September 7, 2000 (referring to alleged 12-month blackout period in MTE served by Broadband Office, limiting service by other CLECs).

³⁴⁶ *Competitive Networks NPRM*, 14 FCC Rcd at 12706.

³⁴⁷ See Conn. Gen. Stat. Ann. § 16-2471 (1997); 16 Texas Admin. Code § 26.129 (Sept. 7, 2000).

³⁴⁸ See 47 C.F.R. § 1.711 *et seq.*

³⁴⁹ See, e.g., 47 C.F.R. § 1.1401 *et seq.* (establishing procedures for complaints under the Pole Attachments Act).

telecommunications carriers, property owners, consumers, and the Commission, as well as suggestions for reducing those burdens. In addressing enforcement issues, parties should consider the effects both of direct regulation of property owners and of regulation of carriers.

159. Finally, we seek comment on any other actions we should take to ensure that customers in MTEs will have access to the telecommunications service provider of their choice.

B. Exclusive Contracts

160. In this section, we request comment on whether today's prohibition on exclusive access contracts in commercial MTEs should be extended to residential MTEs, and on whether we should prohibit carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs.

1. Residential Exclusive Contracts

161. We request comment on whether we should extend today's prohibition on exclusive access contracts in commercial buildings to residential buildings. We note the Real Access Alliance's argument that exclusive contracts should not be prohibited in residential MTEs because, in these settings, landlords need to offer LECs exclusive contracts to ensure high-quality, inexpensive telecommunications service for their tenants.³⁵⁰ On the other hand, commenters that advocate prohibiting exclusive contracts generally do not distinguish between commercial and residential markets.³⁵¹ However, we note that there may be significant differences between residential and commercial buildings and the impact exclusive contracts may have on each.

162. We recognize that both residential and commercial tenants have limited recourse in addressing the lack of telecommunications choices offered in buildings serviced under exclusive contracts. Typically, the only recourse for the tenant is to accept the lack of choice or move. Although residential and commercial tenants lease space in a generally competitive market, both types of tenants are limited in their ability to move immediately by contractual leasing terms. Commercial tenants, whose lease terms tend to run 5 to 15 years, can be especially affected as opposed to residential tenants, whose lease terms are much shorter, typically 1-year and month-to-month.³⁵² Residential tenants also differ from commercial tenants in that commercial tenants face significant disincentives in the form of relocation costs when measured relative to the benefits they may forgo under an exclusive provider arrangement. Commercial tenants may have recourse in principle, but because of their long lease terms and other impediments they may face stronger incentives not to pursue their relocation options, as compared with residential tenants. For these reasons, we distinguished commercial and residential buildings and we decided at present to prohibit exclusive contracts only in the commercial context. However, given the paucity of record evidence and in light of our experience with the use of video programming exclusive contracts in residential MTEs, we request further comment on whether we should continue to allow telecommunications providers to enter into exclusive contracts with owners of residential MTEs.

³⁵⁰ See Letter from Matthew C. Ames, Counsel for Real Access Alliance, to Magalie Roman Salas, Secretary, FCC, filed June 16, 2000.

³⁵¹ See, e.g., AT&T Comments at V.; Teligent Comments at 17.

³⁵² Real Access Alliance Comments at 7.

2. Exclusive Access Provisions in Existing Contracts

163. We seek comment on whether we should prohibit carriers from enforcing exclusive access provisions in existing contracts in either commercial or residential MTEs. AT&T has argued that for local competition to thrive among telecommunications carriers in commercial MTEs, building owners must be permitted to terminate their existing exclusive contracts and seek new relationships with competing carriers.³⁵³ Moreover, AT&T argues that the Commission has authority to void exclusive contracts that are currently in effect.³⁵⁴

164. We recognize that the Commission has previously exercised its authority to modify provisions of private contracts when necessary to serve the public interest.³⁵⁵ As the Commission explained in our *Expanded Interconnection Order*, the benefit of this approach is that it allows “an incumbent provider’s established customers to consider taking service from a new entrant.”³⁵⁶ We recognize, though, that the modification of existing exclusive contracts by the Commission would have a significant effect on the investment interests of those building owners and carriers that have entered into such contracts. Thus, we are inclined to proceed cautiously in this area. We seek comment on whether prohibiting carriers from enforcing access provisions in existing contracts in either commercial or residential MTEs is necessary to ensure that customers obtain the benefits of the more competitive access environment envisioned in the 1996 Act. We also seek comment on whether, in lieu of an immediate prohibition on the enforcement of exclusive access provisions in existing contracts, we should phase out such provisions by establishing a future termination date for these provisions. We seek comment on what termination date should be adopted if the Commission were to take such action.

C. Preferential Marketing Agreements and Other Preferential Arrangements

165. As noted above, several commenters briefly address various preferential building owner/LEC relationships, such as exclusive marketing arrangements or bonuses given by landlords to tenants who subscribe to the services of particular competitive LECs. Generally, competitive LECs argue that, like exclusive contracts, such preferential arrangements should not be permitted.³⁵⁷ Qwest notes, in particular, that “[a]n arrangement that is not technically ‘exclusive’ may in fact have the practical effect of being exclusive, if the building owner refuses to make the same arrangement available

³⁵³ See, e.g., AT&T Comments at 28.

³⁵⁴ The Commission has the power to prescribe a change in contract rates when it finds them to be unlawful and to modify other provisions of private contracts when necessary to serve the public interest. AT&T Comments at 27 (citing *Western Union Telegraph Co. v. FCC*, 815 F.2d 1495, 1501 (D.C. Cir. 1987)). The Commission previously has exercised that authority to permit customers to “terminate” their “service arrangements” with a carrier “without being contractually liable for such termination.” AT&T Comments at 26-27 (citing *Competition in the Interstate Interexchange Marketplace, Memorandum Opinion & Order on Reconsideration*, 10 FCC Rcd 4421, ¶ 5 n.15 (1995)); see also *Competition in the Interstate Interexchange Marketplace, Report & Order*, 6 FCC Rcd 5880, ¶ 151 (1991).

³⁵⁵ *Expanded Interconnection with Local Telephone Company Facilities, Memorandum Opinion and Order*, 9 FCC Rcd 5154, ¶ 197 (1994) (*Expanded Interconnection Order*).

³⁵⁶ *Id.*

³⁵⁷ WinStar Comments at 25 (discussing both exclusive contracts and preferences and arguing that they do not promote competition); Qwest Reply Comments at 11.

to other carriers.”³⁵⁸ In contrast, other commenters argue that preferential arrangements are often beneficial.³⁵⁹ For example, SBC asserts that, in exchange for exclusive marketing and advertising services, LECs may offer consideration, “such as the payment of commissions to . . . property owners and discounted or packaged services for their tenants,”³⁶⁰ and that the resulting packages can be beneficial to both building owners and tenants. Optel echoes SBC’s view and urges that any Commission action prohibiting exclusive marketing agreements “may undermine concessions given to MDU residents (e.g., lower rates) in exchange for marketing services at the MDU.”³⁶¹ Optel also asserts that these arrangements are not anticompetitive, particularly when they involve carriers that lack market power.³⁶²

166. Notably, several states have promulgated rules either requiring that the terms of any preferential arrangement be disclosed to tenants or prohibiting preferential arrangements altogether.³⁶³ In particular, the Massachusetts Department of Telecommunications and Energy has noted that marketing agreements, which it defines as contracts in which a building owner “receives compensation from a service provider for allowing it to market its services to tenants or receive compensation for each new tenant that becomes a customer of the service provider” have the “potential to encourage discriminatory behavior.”³⁶⁴ As a result, in that state, the existence and terms of any marketing agreements must be disclosed to tenants. Also, in Connecticut, contracts for building access between telecommunications providers and building owners cannot include “[a]ny term that discriminates in favor of any one telecommunications service provider with respect to the provision of access or compensation requested.”³⁶⁵

167. As a preliminary matter, we note that preferential arrangements often arise in contexts in which a building owner has a financial interest in a telecommunications carrier. For example, it is our understanding that building LECs often enter into exclusive marketing or other preferential arrangements with their building owner investors. Preferential arrangements are not, however, necessarily limited to this context.³⁶⁶ We seek comment on the types of preferential arrangements that exist and the contexts in which they occur.

³⁵⁸ Qwest Reply Comments at 11. Although we have already prohibited *de facto* exclusive contracts, *see supra para.* 37, we seek comment on whether we should prohibit preferential arrangements that fall short of being considered *de facto* contracts.

³⁵⁹ SBC Comments at 7 (arguing that, while exclusive access contracts are anti-competitive, exclusive marketing or advertising contracts “are valid business tools”); Optel Comments at 18; *see also* SBC Reply Comments at 9-11.

³⁶⁰ SBC Comments at 7.

³⁶¹ Optel Comments at 18.

³⁶² *Id.*

³⁶³ *See, e.g., Massachusetts Nondiscriminatory Access Order; Nebraska MDU Order.*

³⁶⁴ *Massachusetts Nondiscriminatory Access Order* at 30.

³⁶⁵ Conn. Gen. Stats. Ann. § 16-2471-6(a)(6) (1997).

³⁶⁶ *See* Letter from Kathleen Q. Abernathy, Vice President, BroadBand Office, to Magalie Roman Salas, Secretary, FCC, dated April 13, 2000 (enclosing handout from April 13, 2000 *ex parte* meeting with Commercial Wireless Division staff); Letter from Joseph M. Sandri, Jr., WinStar Communications, Inc., to Magalie Roman Salas, Secretary, FCC, dated November 22, 1999.

168. To the extent any arrangement effectively restricts a premises owner from providing access to other telecommunications service providers, it is prohibited under the rules we adopt today. However because building LECs have only recently emerged as local telecommunications service providers, and because we have received few comments on this issue in general, we have decided not to address preferential arrangements generally in the Report and Order. Instead, we seek further comment on whether, and to what extent, the Commission should regulate preferential arrangements. Specifically, we seek comment on the market effects of such arrangements and whether these effects vary with the type of market (e.g., residential vs. commercial). Are they beneficial to consumers because they provide additional incentives for competitive telecommunications carriers to serve multiunit buildings that would otherwise not be economically desirable? Or, do they effectively restrict other carriers from providing additional competitive alternatives? Finally, we seek comment on whether preferences should be viewed differently in the context of an equity or revenue sharing relationship between a building owner and a LEC than in other situations.

D. Definition of Right-of-Way in MTEs

169. In the Report and Order above, we conclude that, for purposes of Section 224, a “right-of-way” in a building includes, at a minimum, a defined pathway that a utility either is actually using or has specifically identified and obtained the right to use in connection with its transmission and distribution network.³⁶⁷ Some commenters, however, advocate a broader interpretation of the term. In particular, several commenters suggest that where a utility has a right to install facilities anywhere in an MTE, it has a right-of-way over the entire property, which can then be accessed by any party included as a beneficiary under Section 224.³⁶⁸

170. We seek additional comment regarding the extent of utility rights-of-way within MTE buildings under Section 224. On the one hand, we recognize that a broad ability by competitive carriers to access areas within MTEs would arguably speed the arrival of telecommunications choices and advanced services to consumers. On the other hand, we are concerned about the ramifications of potentially granting carriers an unbounded right to place facilities anywhere within buildings. First, as a matter of statutory construction, we note that the terms “pole,” “duct,” and “conduit” refer to defined spaces occupied by a utility as part of its network. We thus seek comment on whether “right-of-way” should also be read to denote only a similar type of defined space.³⁶⁹ Parties advocating a broader definition should also address how, in the absence of a defined pathway, we would comply with the statutory directive to determine just and reasonable rates by means of an allocation of space.³⁷⁰ We further seek comment on whether, in the absence of a mechanism for compensating underlying property owners, a broad definition of rights-of-way would effect an uncompensated taking in violation of the

³⁶⁷ See para. 83, *supra*.

³⁶⁸ See, e.g., AT&T Comments at 19-22; Teligent Comments at 34-35; WinStar Comments at 56.

³⁶⁹ We note the *in pari materia* rule of statutory construction, which states that when a particular statute is ambiguous, statutes which relate to the same subject matter should be read together so that the legislature’s intention can be gathered from the whole of the enactments. See *Undercofler v. L.C. Robinson & Sons, Inc.*, 111 Ga.App. 411, 141 S.E.2d 847, 849 (Ga. App. 1965); *Kimes v. Bechtold*, 342 S.E.2d 147, 150 (W.Va. 1986).

³⁷⁰ See 47 U.S.C. § 224(d),(e).

Fifth Amendment.³⁷¹ We also request comment regarding the circumstances, if any, under which a utility might “own or control” a right-of-way in the absence of a defined space, as required to create a right of access under Section 224.³⁷² Finally, commenters should address whether an expansive definition of “right-of-way” would compromise the operation of our rules governing the disposition of cable inside wire by broadly permitting cable incumbents to remain in an MDU against the wishes of the property owner.³⁷³

E. Extension of Cable Inside Wiring Rules.

171. In the *Competitive Networks NPRM*, we sought comment on “whether our rules governing access to cable inside wiring for MVPDs [multichannel video program distributors] should be extended so as to afford similar access to providers of telecommunications services.”³⁷⁴ Although a number of commenters addressed extending the application of the cable inside wiring rules to include telecommunications carriers,³⁷⁵ we find that the record on this issue should be developed further. Accordingly, we seek additional comment.

172. Section 76.804(a) of the Commission’s rules, enacted in 1997, sets forth the procedures for disposition of “home run wiring” owned by an MVPD in a multiple dwelling unit (MDU) when the MVPD “does not (or will not at the conclusion of the notice period) have a legally enforceable right to remain on the premises against the wishes of the MDU owner”³⁷⁶ Several definitions are fundamental to understanding the application of the home run wiring rules. First, an MVPD includes “a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming”³⁷⁷ Second, MDUs include residential buildings such as apartment buildings, condominiums and cooperatives,³⁷⁸ but do not include commercial office buildings. Third, home run wiring is “[t]he wiring from the [MVPD] demarcation point to the point at which the MVPD’s wiring becomes devoted to an individual subscriber or individual loop.”³⁷⁹ By contrast, cable home wiring is “[t]he internal wiring contained within the premises of a subscriber which begins at the demarcation point.”³⁸⁰

³⁷¹ We note our recent holding that a utility is not required to exercise its powers of eminent domain on behalf of third parties in order to expand an existing right-of-way. See *Local Competition Pole Attachments Reconsideration Order*, 14 FCC Rcd at 18063, ¶ 38.

³⁷² See paras. 85-90, *supra*.

³⁷³ 47 C.F.R. § 76.804(a); see para. 90, *supra*.

³⁷⁴ *Competitive Networks NPRM*, 14 FCC Rcd at 12710, ¶ 68 (footnote omitted).

³⁷⁵ See, e.g., CAI Comments at 28-29; RCN Comments at 18-21; USTA Comments at 18.

³⁷⁶ 47 C.F.R. § 76.804 (a).

³⁷⁷ 47 U.S.C. § 522(13).

³⁷⁸ 47 C.F.R. § 76.800(a).

³⁷⁹ 47 C.F.R. § 76.800(d).

³⁸⁰ 47 C.F.R. § 76.5(11). The cable demarcation point in MDUs, with non-loop-through wiring configurations, is at (or about) 12 inches outside of where the cable wire enters the subscriber’s individual dwelling unit. 47 C.F.R. § (continued....)

173. The Commission's home run wiring rules provide that when an MVPD no longer has a legal right to remain on the premises of an MDU,³⁸¹ the MDU owner (or another MVPD at the MDU owner's discretion) may negotiate to purchase the home run wiring if it is not removed by the incumbent MVPD.³⁸² If the parties cannot agree on a price, then the incumbent MVPD "must elect: to abandon without disabling the wiring; to remove the wiring and restore the MDU consistent with state law; or to submit the price determination to binding arbitration by an independent expert."³⁸³ In the *Competitive Networks NPRM*, we noted that "[c]ommenters in other proceedings have argued that this rule offers benefits to providers of video services that are not currently available to telecommunications providers, and that this distinction not only is arbitrary but creates uneconomic incentives for providers to incorporate video services into their offerings simply to take advantage of the more favorable rules."³⁸⁴

174. Based upon our review of the comments on this issue in the record, it appears that our proposal to extend application of the home run wiring rules to include telecommunications carriers may not have been entirely clear, and therefore may have been misinterpreted by parties commenting on the issue. We did not intend to solicit comment on application of new rules to "telephone home run wiring" as one party suggested in response to the *Competitive Networks NPRM*.³⁸⁵ Rather, we intended to seek comment, and do so here, on whether our home run wiring rules should be amended to permit an MDU owner to designate a telecommunications carrier to negotiate to purchase cable home run wiring. The right to appoint a telecommunications carrier to conduct such negotiations would be in addition to the MDU owner's prerogative to designate an MVPD to conduct such negotiations. We also clarify that we are not seeking comment on whether Section 76.802 of the cable inside wiring rules, regarding the disposition of "cable home wiring" within an individual subscriber's unit, should be amended. Section 76.802 already enables the subscriber to purchase cable home wiring from the departing MVPD and, thus, the subscriber could use this wiring for telecommunications service.³⁸⁶

175. We note our agreement with CAI that extending the cable home run wiring rules to include telecommunications carriers would result in "[a]dditional . . . home run wiring be[ing] made available for use by alternative providers [thereby] promoting competition."³⁸⁷ We encourage parties to comment on the technical and policy implications of extending the cable home run wiring rule as proposed above. Parties should address whether there are any technical impediments to using coaxial cable home run wiring to provide telecommunications service. Parties should also address the potential

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76.5(mm)(2). The cable demarcation point in MDUs, with loop-through wiring configurations, is at (or about) 12 inches outside of where the cable enters or exits the first and last individual dwelling units on the loop. 47 C.F.R. § 76.5(mm)(3).

³⁸¹ An MVPD's legal right to remain on the premises of an MDU may be extinguished by, among other things, operation of contract, statute or common law.

³⁸² 47 C.F.R. § 76.804 (a).

³⁸³ 47 C.F.R. § 76.804(a).

³⁸⁴ *Competitive Networks NPRM*, 14 FCC Rcd at 12710, ¶ 68.

³⁸⁵ ICTA Comments at 7.

³⁸⁶ 47 C.F.R. § 76.802.

³⁸⁷ CAI Comments at 40.

impact on the provision of video service to MDUs if we extend the home run wiring rules to allow MDU owners to designate telecommunications carriers to acquire the wiring.

VI. CONCLUSION

176. The actions that we take today reflect both the progress that is being made toward competitive telecommunications access to MTEs and the obstacles that remain to ubiquitous consumer choice. As we have recognized, consumer choice among telecommunications providers and service offerings in MTEs is vital to the achievement of the procompetitive and deregulatory goals of the 1996 Act. On the one hand, the record shows that meaningful progress toward competition is taking place, and real estate industry leaders are actively working on voluntary measures that have the potential further to promote consumer choice. At the same time, the record shows a significant number of instances in which incumbent LECs and premises owners continue to obstruct competitive access. Taking these considerations together, we therefore undertake targeted actions to ameliorate many of the specific existing obstacles to competitive access to MTEs, while refraining at this time from any comprehensive regulation of the access marketplace. In addition, we seek further comment on the current state of the market and on potential further actions that may become necessary. We intend to actively monitor developments, including the real estate industry's progress on its commitment to develop model contracts and best practices, and we will consider taking additional action if the current impediments to consumer choice are not swiftly ameliorated. In this way, we believe that we best promote the public interest in achieving ubiquitous availability to consumers of competitive, diverse, and advanced telecommunications service offerings.

VII. PROCEDURAL MATTERS

177. Regulatory Flexibility Act Analysis. As required by Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603 an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Competitive Networks NPRM* in this proceeding.³⁸⁸ The Commission sought written public comments on the proposals set forth in the *NPRM*, including the IRFA. Appendix C of this *First Report and Order and Further Notice of Proposed Rulemaking, Fifth Report and Order and Memorandum Opinion and Order, and Fourth Report and Order and Memorandum Opinion and Order* contains the Commission's Final Regulatory Flexibility Analysis (FRFA) in compliance with the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Pub. L. No. 104-121, 110 Stat. 847 (1996). Appendix D of this *First Report and Order and Further Notice of Proposed Rulemaking, Fifth Report and Order and Memorandum Opinion and Order, and Fourth Report and Order and Memorandum Opinion and Order* contains the Commission's Initial Regulatory Flexibility Analysis (IRFA) regarding issues for further comment, in compliance with the RFA, as amended by the CWAAA).

178. Paperwork Reduction Act Analysis. This *First Report and Order and Further Notice of Proposed Rulemaking, Fifth Report and Order and Memorandum Opinion and Order, and Fourth Report and Order and Memorandum Opinion and Order* contains information collections, as described in Section D of the Final Regulatory Flexibility Analysis in Appendix C *infra*. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *First Report and Order and Further Notice of Proposed Rulemaking, Fifth Report and Order and Memorandum Opinion and Order, and Fourth Report and Order and Memorandum Opinion and Order*, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due at the

³⁸⁸ See *Competitive Networks NPRM*, 14 FCC Rcd at 12723-34.

same time as other comments on this First Report and Order and Further Notice of Proposed Rulemaking, Fifth Report and Order and Memorandum Opinion and Order, and Fourth Report and Order and Memorandum Opinion and Order; OMB comments are due 60 days from date of publication of this First Report and Order and Further Notice of Proposed Rulemaking, Fifth Report and Order and Memorandum Opinion and Order, and Fourth Report and Order and Memorandum Opinion and Order in the Federal Register. Comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

179. Ex Parte Rules. This First Report and Order and Further Notice of Proposed Rulemaking, Fifth Report and Order and Memorandum Opinion and Order, and Fourth Report and Order and Memorandum Opinion and Order constitute a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules.³⁸⁹ Persons making oral ex parte presentations relating to the First Report and Order and Further Notice of Proposed Rulemaking, Fifth Report and Order and Memorandum Opinion and Order, and Fourth Report and Order and Memorandum Opinion and Order are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required.³⁹⁰ Other rules pertaining to oral and written presentations are set forth in Section 1.1206(b) as well. Interested parties are to file with the Secretary, FCC, and serve International Transcription Services (ITS) with copies of any written ex parte presentations or summaries of oral ex parte presentations in these proceedings in the manner specified below for filing comments.

180. Filing Procedures. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before December 22, 2000, and reply comments on or before January 22, 2001. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24,121 (1998).

181. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D.C. 20554.

182. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor,

³⁸⁹ See Amendment of 47 C.F.R. § 1.1200 *et seq.* Concerning Ex Parte Presentations in Commission Proceedings, GC Docket No. 95-21, *Report and Order*, 12 FCC Rcd 7348, 7356-57, ¶ 27, citing 47 C.F.R. § 1.1204(b)(1) (1997).

³⁹⁰ See 47 C.F.R. § 1.1206(b)(2), as revised.

International Transcription Services, Inc., 445 Twelfth Street, S.W., Room CY-B402, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, S.W., Washington, D.C. 20554.

183. Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with Section 1.49, 47 C.F.R. § 1.49, and all other applicable sections of the Commission's Rules. We also direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

184. Written comments by the public on the information collections are due on or before December 22, 2000. Written comments by the Office of Management and Budget (OMB) on the proposed and/or modified information collections must be submitted on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or via the Internet to edward.springer@omb.eop.gov.

185. Further Information. For further information about this proceeding, contact Joel Taubenblatt at 202-418-1513, jtaubenb@fcc.gov, or Lauren Van Wazer at 202-418-0030, lvanwaze@fcc.gov.

VIII. ORDERING CLAUSES

186. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2(a), 4(j), 4(i), 7, 201, 202, 205, 221, 224, 251, 303, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), 154(j), 157, 201, 202, 205, 221, 224, 251, 303, and 405, that the amendments to the Commission's rules set forth in Appendix B are ADOPTED.

187. IT IS FURTHER ORDERED that new Sections 64.2300, 64.2301, and 64.2302 of the Commission's rules, 47 C.F.R. §§ 64.2300, 64.2301, and 64.2302, set forth in Appendix B, and the revisions to Section 1.4000 of the Commission's rules, 47 C.F.R. § 1.4000, set forth in Appendix B, SHALL BECOME EFFECTIVE 60 days after publication in the Federal Register.

188. IT IS FURTHER ORDERED that the revisions to Section 68.3 of the Commission's rules, 47 C.F.R. § 68.3, set forth in Appendix B, SHALL BECOME EFFECTIVE 120 days after publication in the Federal Register, pending OMB approval.

189. IT IS FURTHER ORDERED that the motions to submit Further Reply Comments filed by Concerned Communities and Organizations and the Wireless Communications Association International ARE GRANTED.

190. IT IS FURTHER ORDERED that the Petition for Clarification and Reconsideration of the 1997 *Demarcation Point Order* filed by Bell Atlantic IS GRANTED, as discussed in Section IV.C.

191. IT IS FURTHER ORDERED that the Petition for Clarification and Reconsideration of the 1997 *Demarcation Point Order* filed by BellSouth IS DENIED, as discussed in Section IV.C.

192. IT IS FURTHER ORDERED that the Petition for Reconsideration of the *Local Competition First Report and Order* filed by WinStar IS GRANTED to the extent discussed in Section IV.D and otherwise IS DENIED.

193. IT IS FURTHER ORDERED that the Petition for Environmental Impact Statement filed by the National League of Cities, the National Association of Counties, the Michigan Municipal League, and the Texas Coalition of Cities for Utility Issues IS DENIED as discussed in Section IV.E, except to the extent that the Petition concerns issues raised in the Notice of Inquiry portion of the *Competitive Networks NPRM*, which will be addressed separately at a later time.

194. IT IS FURTHER ORDERED that the Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *First Report and Order and Further Notice of Proposed Rulemaking, Fifth Report and Order and Memorandum Opinion and Order, and Fourth Report and Order and Memorandum Opinion and Order*, including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Sections 603(a) and 604(b) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C.A. §§ 603(a), 604(b).

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary



APPENDIX A
List of Commenters

Comments	Receipt Date
411 Co., Ltd	08/27/99
Acadiana Apartment Assn.	08/09/99
ACUTA (Education Parties)	08/27/99
Ada Township	08/04/99
Adelphia Business Solutions	08/27/99
Adelphia Communications Corporation	08/27/99
AIMCO	08/16/99
Allen House Apartments	08/23/99
Alliance Residential Management, L.L.C.	08/13/99
Allied Riser Communications Corporation	08/27/99
Alvarado Realty Company	08/13/99
Alvarado Realty Company	08/24/99
Amalgamated Housing Corporation	08/27/99
American Electric Power Service Corporation, et al.	08/27/99
American Shelter Management Company, Inc.	08/20/99
American Water Works Assn.	08/27/99
Ameritech	08/27/99
AMLI Residential	08/19/99
Anchor Estates	08/27/99
Apartment & Office Build. Assn. of Metro. Washington	08/11/99
Apartment Assn. California Southern Cities	08/23/99
Apartment Assn. of greater New Orleans, Inc.	08/16/99
Apartment Assn. of Louisiana	08/09/99
Apartment Investment and Management Company	08/23/99
Apex Site Management, Inc.	08/27/99
Archon Group	08/25/99
Arden Realty, Inc.	08/27/99
Arrowhead Management Company	08/25/99
Artcraft Companies	08/09/99
Assn. for Local Telecommunications Services (ALTS)	08/27/99
AT&T Corp. (AT&T)	08/27/99
Avista Corporation	08/27/99
Ballard Companies	08/16/99
Barton Farms	08/27/99
Baton Rouge Apartment Association, Inc.	08/19/99

Beacon Residential Management	08/19/99
Bell Atlantic	08/27/99
BellSouth Corporation (BellSouth)	08/27/99
Benchmark Apartments	08/24/99
Benicia California	08/17/99
Berkshire Industrial Corporation	08/24/99
Berkshire Realty Company, Inc.	08/17/99
Berkshire Springs	08/24/99
Bexley Village	08/27/99
BGK Properties	08/23/99
Black Rock Cable / John Kehres	08/12/99
Bloomfield Township	07/30/99
Blue Star Communications, Inc.	08/27/99
BOMA Saint Paul (BOMA)	08/13/99
Bowen Real Estate Group	08/16/99
Braden Fellman Group, Ltd.	08/19/99
Bradford Management Company of Dallas	08/09/99
Brandon Glen Apartment Homes	08/12/99
Brandywine Realty Trust	08/16/99
Bridgedale Terrace Apartments	08/20/99
Brigantine Group, Inc.	08/04/99
Brookfield Commercial Properties Inc.	08/12/99
Brookmeadow	08/27/99
Buckeye Real Estate	08/24/99
Burton's Landing	08/27/99
Burtonsville Office Park Limited Partnership	08/13/99
C & G Investment Associates	08/24/99
CAIS, Inc.	08/27/99
California Public Utilities Commission	08/12/99
CAMCO, Inc.	08/20/99
Carbon Development Corp.	08/13/99
CarrAmerica Realty Corporation	08/26/99
Cellular Telecommunications Industry Assn.	08/27/99
Center Management Corporation	08/16/99
Central Management, Inc.	08/26/99
Central Texas Communications, Inc.	08/27/99
CHARLES BOPP	08/13/99
Charter Properties Inc.	08/12/99
Charter Township of Harrison	07/26/99
Charter Township of Ypsilanti	08/20/99
Chris Pierquet	08/26/99
Cincinnati Bell Telephone Company	08/27/99

Cinergy Corp.	08/27/99
City & County of San Francisco	08/27/99
City Milan	07/28/99
City of Alpena	07/30/99
City of Antigo Housing Authority	08/23/99
City of Arlington Texas	08/09/99
City of Arvada	08/23/99
City of Bakersfield	08/24/99
City of Belding	08/02/99
City of Bellingham Washington	08/17/99
City of Benicia	08/13/99
City of Bremerton	08/02/99
City of Burnsville	08/27/99
City of Cadillac	07/30/99
City of Carrollton	08/11/99
City of Coconut Creek	08/06/99
City of Coopersville	08/23/99
City of Denton	08/16/99
City of Dublin	08/09/99
City of Fontana	08/16/99
City of Garland	08/16/99
City of Grand Praire Texas	08/02/99
City of Irondale	08/11/99
City of Ishpeming	08/13/99
City of Kentwood	08/09/99
City of Longview Texas	07/26/99
City of Loveland	07/28/99
City of Malibu	07/30/99
City of Marshall	08/06/99
City of Medina	08/02/99
City of Missouri City	08/03/99
City of Mont Belvieu	08/06/99
City of Plano	08/09/99
City of Richmond, Virginia	08/13/99
City of Rockwall	08/16/99
City of Schertz, Texas	08/02/99
City of Springfield	08/23/99
City of Tamarac	08/17/99
City of Tecumseh, Michigan	08/16/99
City of Walker	07/26/99
City of Waukesha	08/23/99
City of Westland	07/28/99

City of White Plains	08/13/99
City of Wyoming	07/30/99
Clark County Home Builders Assn.	08/17/99
Clark Whitehill	08/16/99
Codina Development Corporation	08/16/99
Coldwell Banker Commercial Hilgenberg Realtors	08/23/99
Colonial Properties Trust	08/13/99
Colony North	08/25/99
Commonwealth Edison Co.	07/26/99
Community Associations Institute et al.	08/27/99
Community Housing Improvement Program, Inc.	07/20/99
Competition Policy Institute	08/27/99
Competitive Telecommunications Association	08/26/99
Cornerstone Properties Inc. (Cornerstone et. al.)	08/26/99
Cooperative Housing Coalition	08/27/99
Coordinating Council of Cooperatives	08/27/99
Cornerstone Real Estate Advisers, Inc.	08/27/99
Corporate Office Properties	08/13/99
Covertry Apartments, DePere, WI	08/26/99
Crescent	08/12/99
Cross Roads Apartments	08/27/99
Crown Pointe Apartments	08/27/99
Curtin Company	08/09/99
Dallas Wireless Broadband, L.P.	08/27/99
Department of Defense / Army	08/12/99
Diamond Lake Apartment Homes	08/27/99
DMHA	08/20/99
Draper and Kramer	08/26/99
Drucker & Flak, LLC	08/26/99
Duke-Weeks Realty Corporation	08/27/99
Dunwoody Court Condo Assoc.	08/09/99
East Group Properties	08/27/99
Eastland Apartments	08/27/99
EBMC	08/20/99
ECI Management Corporation	08/13/99
Edgewood Management Corporation	08/16/99
Electric Utilities Coalition	08/27/99
Ellis Erb, Inc.	08/04/99
Ensemble Communications, Inc.	08/27/99
Entergy Services, Inc.	08/27/99
Epoch Management Incorporated	08/19/99
EPT Management Company	08/16/99

Equity Office Properties Trust	08/27/99
Essex Property Trust, Inc.	08/26/99
Etkin & Co.	08/17/99
FDC Management, Inc.	08/24/99
Federation of New York Housing Cooperatives	08/26/99
First Centrum, L.L.C.	08/16/99
First Housing Corporation	08/16/99
First Regional TeleCOM, LLC	08/27/99
Fixed Wireless Communications Coalition	08/27/99
Flagstone	08/24/99
Flordia Power & Light Company	08/26/99
Fox Lake Manor Apartments	08/24/99
Fox Meadow	08/27/99
Foxtree Apartments	08/24/99
Frye Properties	08/11/99
FSC Realty, LLC	08/16/99
Gene B. Glick Company Inc.	08/13/99
General Communications, Inc.	08/27/99
General Growth Properties, Inc.	08/12/99
Gilmour Court Apts., Inc.	08/11/99
Ginsburg Development, LLC	08/18/99
Given & Spindler Companies	08/23/99
Glenwood Management Corporation	08/12/99
Global Crossing Ltd	08/27/99
Golf Side Apartments	08/24/99
Great Atlantic Real Estate-Property Management	08/16/99
Green Store Partners LLC	08/27/99
Greenbelt Homes, Inc.	08/16/99
Gross Builders	08/26/99
Gryboski Rental Properties	08/26/99
GTE	08/27/99
Hampton Management Co.	08/12/99
Harbert Realty Services of Flordia, Inc.	08/26/99
Hendersen-Webb, Inc.	08/18/99
Hepfner Smith Airhart & Day, Inc.	08/16/99
Heritage Apartments	08/27/99
HighSpeed.Com, L.L.C.	08/27/99
Hillcrest Apartments	08/24/99
Hoppe and Harner	08/16/99
Horne Companies, Inc.	08/20/99
Hunter's Glen Apartment	08/24/99
Huntington Brook	08/24/99

Huntington Lakes	08/24/99
ICG Telecom Group, Inc.	08/27/99
Independent Cable & Telecommunications Assn.	08/27/99
Insignia/ESG of Colorado, Inc.	08/17/99
Institute of Real Estate Management	08/26/99
Inverness Properties, LLC	08/16/99
Jamestown Homes, Inc.	08/26/99
Jaymont Realty Incorporated	08/16/99
Jefferson West Apt's.	08/24/99
John M. Stone Management Corporation	08/02/99
JP Realty, Inc.	08/16/99
Kaftan Enterprises, Inc.	08/16/99
Kaiserman Company Inc.	08/16/99
Kansas City Power & Light Company	08/27/99
Kessler Homes, Inc.	08/16/99
Knight Company	08/09/99
Koll Development Company	08/16/99
Kontogiannis Companies	08/24/99
L&B Realty Advisors, Inc.	08/16/99
L&C Land & Co.	08/27/99
LaCrosse Apartments and Carriage House	08/16/99
League of Oregon Cities	08/05/99
Leon N. Weiner & Associates, Inc.	08/20/99
Level 3 Communications	08/27/99
Liberty Heights at Northgate	08/24/99
Lincoln Property Company	08/24/99
Lincoln Springs	08/26/99
Lincolnshire Townhouse Cooperative, Inc.	08/26/99
Lincolnwood Cooperative, Inc.	08/26/99
Lloyd Companies	08/13/99
Local and State Government Advisory Committee	08/05/99
Manchester Village , Inc.	08/26/99
Manco Abbott, Inc.	08/11/99
Mark III Management Corporation	08/26/99
Maxim Property Management	08/24/99
Mayor City of Jacksonville Beach	08/05/99
McDougal Companies	08/10/99
MCI WorldCom, Inc	08/27/99
McLeodUSA Advanced Telecommunication Services	08/26/99
McNeil Real Estate Management, Inc.	08/16/99
Melvin Mark Companies	08/17/99
Metricom, Inc.	08/27/99

Metromedia Fiber Network Services, Inc.	08/27/99
Mid- America Management	08/12/99
Mid- Atlantic Realty Company Inc.	08/12/99
Mid-America Apartment Communities	08/09/99
Mike Tisiker	08/12/99
Millpond Apartments Limited Partnership	08/24/99
Minnesota Power, Inc.	08/27/99
Missouri Apartment Assn.	08/09/99
Mitchell Investments	08/16/99
Montgomery Village Foundation	08/25/99
National Association of Counties, et al.	08/27/99
New Millenium Enterprises, Inc.	08/13/99
NEXTLINK Communications, Inc.	08/27/99
North American Realty	08/12/99
North Shore Cable Commission	08/23/99
North Village Apartments	08/16/99
Nottingham Apartments	08/27/99
NY City Depart. of Info.Tech. & Telecommunications	08/13/99
NY Department of Public Service	08/13/99
Olnick Organization	08/12/99
Omni Properties, Inc.	08/09/99
OpTel, Inc. (OpTel)	08/27/99
Orchard Glen Cooperative, Inc.	08/26/99
Palm Springs II Condominium Association, Inc.	08/09/99
Parkway Properties	08/25/99
Partners Management Company	08/13/99
Paul B. Whitty	08/16/99
PCRM	08/13/99
Peppercorn Apartments	08/27/99
Personal Communications Industry Association	08/27/99
Philard Corporation	08/13/99
Philip J. McBride	08/17/99
Pine Crest Apartments	08/23/99
Plantation Ridge	08/12/99
Pleasant Woods Apartments	08/24/99
Polen Mortgage & Realty Co.	08/26/99
Polinger Shannon & Luchs Company, AMO	08/11/99
Port O'Call Apartments	08/20/99
Post Properties, Inc.	08/17/99
Prairie Creek Apartments	08/22/99
Prescott Place Apartments	08/24/99
Pressly Development Company, Inc.	08/11/99

Princeton Properties Management, Inc.	08/09/99
Providence Apartment Homes	08/24/99
Pyramid Developments, LLC	08/13/99
Radwyn Garden Apartments	08/27/99
Rand Commerical Brokers	08/19/99
RCN Corporation	08/27/99
Real Access Alliance	08/24/99
Real Estate Board of New York	08/13/99
Realvest, R.E. Broker	08/24/99
Regal Crest Village/Regal Crest West	08/16/99
Regency Manor Apartments	08/24/99
RF Development, L.L.C.	08/27/99
RF/Max Commerical Investment	08/12/99
Ridgedale I Apartments	08/23/99
Rittenhouse Claridge	08/24/99
River Park Development Co.	08/16/99
River Park West, Inc.	08/16/99
Robinson Township	08/02/99
Roc-Century Associates	08/12/99
Royal Park Townhouses Assn.	08/09/99
S.L. NUSBAUM Realty Co.	08/16/99
Samuel L. Dolnick (condominium homeowner)	08/11/99
San Diego County Apartment Assn.	08/16/99
SBC Communications Inc.	08/27/99
Security Capital Group Inc.	08/27/99
Seldin Company	08/25/99
Shaker Square	08/27/99
Shared Communications Services, Inc.	08/27/99
Signature Management Corporation	08/12/99
Silverwood Associates, Inc.	08/16/99
Sizeler Real Estates Management Co., Inc.	08/27/99
Skyline Plaza Council of Co-Owners	08/16/99
Skyline Property Management, Inc.	08/17/99
South Central Wireless, Inc.	08/27/99
Southview Apartments	08/27/99
Southwestern Oakland Cable Commission	07/28/99
SpectraPoint Wireless LLC	08/26/99
Spectrum Properties, LC	08/24/99
Sprint Corporation	08/27/99
St. John's Housing Corporation	08/20/99
State Wide Investors Inc.	08/26/99
Sterling House	08/27/99

Stonefield Manor Apartments	08/24/99
Stross Law Firm	08/13/99
Summit Management and Realty Company	08/06/99
Sweetwater Ranch	08/24/99
T&C Management Services, Inc.	08/20/99
T&R Properties	08/11/99
T. J. Adam & Company	08/12/99
Tara Cooperative, Inc.	08/26/99
Teligent, Inc. (Teligent)	08/27/99
Texas Office of Public Utility Counsel	08/27/99
The Altman Group of Companies	08/12/99
The Berkshires of Addison	08/24/99
The Bozzuto Group .	08/12/99
The Brody Companies	08/17/99
The Carter Company, Inc.	08/23/99
The Chateau Apartments Co.	08/25/99
The Education Parties	08/27/99
The Gipson Co.	08/12/99
The Indigo On Forest	08/24/99
The Mid-America Management Corporation	08/24/99
Thompson Partners	08/23/99
Thompson Thrift Development	08/20/99
Tidewater Builders Assn.	08/02/99
Tillman Real Estate	08/02/99
Tomlinson & Associates, Inc.	08/16/99
Toonen Rental Properties	08/26/99
Total Service Development, LLC	08/26/99
Town & Country Apartments	08/27/99
Town of Addison	08/13/99
Town of Yarmouth	08/26/99
Towne Properties Asset Management Company	08/16/99
Township of Lyons	08/06/99
Township of Mullica	08/12/99
Transworld Properties, Inc.	08/20/99
Trust Property Management	08/23/99
TVO Realty Partners	08/19/99
U. S. Department of Defense	08/12/99
U.R. RealTel, Inc.	08/16/99
Union Gap Village Condominium Owners' Assn.	08/09/99
United Dominion Realty Trust, Inc.	08/24/99
United States Telephone Association	08/27/99
United Telecom Council	08/27/99

Urstadt Biddle Properties, Inc.	08/13/99
V. K. Development Corporation	08/24/99
Van Buskirk Companies	08/16/99
VBC, Inc.	08/13/99
Village at McLean Gardens	08/24/99
Village Green	08/26/99
Village of Chelsea	08/16/99
Village of Concord	07/30/99
Village of Lisle	08/27/99
Village of Schaumburg	08/09/99
Village of Wilmette	08/16/99
Wallick Properties Inc.	08/05/99
Ward F. Hoppe	08/16/99
Washington Real Estate Investment Trust	08/23/99
Wayland Township	07/26/99
Weigand- Omega Management, Inc.	08/16/99
Wellsford Real Properties, Inc.	08/16/99
Westwood Heights	08/23/99
Wexenthaller Realty Management	08/27/99
White Birch Apartments	08/20/99
Wiegand- Omega Management, Inc.	08/27/99
Willow Park	08/17/99
Wimbledon Apartments	08/27/99
Windsor at Alden Pond	08/24/99
Windsor at Arbors	08/25/99
Windsor at Asbury Square	08/24/99
Windsor at Ashton Woods	08/24/99
Windsor at Brentwood	08/24/99
Windsor at Britton Woods	08/24/99
Windsor at Butternut Ridge	08/23/99
Windsor at Carolina	08/20/99
Windsor at Cedarbrooke	08/24/99
Windsor at Chateau Knoll	08/24/99
Windsor at Eastborough	08/26/99
Windsor at Fairland Meadow	08/26/99
Windsor at Fieldstone	08/23/99
Windsor at Gaslight Square	08/24/99
Windsor at Hunter's Woods	08/27/99
Windsor at Kingsborough	08/23/99
Windsor at McAlpine Place	08/26/99
Windsor at Old Buckingham Station	08/23/99
Windsor at Park Terrace	08/24/99

Windsor at Pine Ridge	08/23/99
Windsor at Polo Run	08/27/99
Windsor at Quiet Waters	08/20/99
Windsor at River Heights	08/23/99
Windsor at Rockborough	08/24/99
Windsor at Sterling Place	08/23/99
Windsor at Stonington Farm	08/23/99
Windsor at Union Station	08/24/99
Windsor at Woodgate	08/24/99
Windsor Courts at Beverly	08/24/99
Windsor Heights at Marlborough	08/24/99
Windsor Meadows at Marlborough	08/25/99
Windsor Ridge at Westborough	08/25/99
Windsor Shirlington Village	08/20/99
Windsor Village at Hauppauge	08/24/99
Windsor Village at Waltham	08/24/99
Wingate Falls	08/12/99
WinStar Communications, Inc. (WinStar)	08/27/99
Wireless Communications Assn. International, Inc.	08/27/99
Wisconsin Management Company Inc.	08/16/99
Woodberry	08/27/99
Woodmont Real Estate Services	08/10/99
Woolson Real Estate Company, Inc.	08/19/99
Worthings Companies	08/13/99
York Creek	08/27/99

Reply Comments (August 28, 1999 through September 27, 1999)	Receipt Date
1st Properties	09/03/99
A.G. Spanos Companies	09/03/99
Acacia Park Apartments, El Paso, TX	08/31/99
Accidental Developement	09/07/99
Affordable Housing Fund I	09/01/99
Aitkin Housing Partners Limited Partnership	09/03/99
Albert House Associates	09/01/99
Albert House Associates	09/03/99
Allied Riser Communications Corporation	09/27/99
American Electric Power Service Corporation et al.	09/27/99
Ameritech	09/27/99
AMLI Residential	09/01/99
Apartment Assn. of Orange County	08/31/99
Apartment Investment and Management Company	08/30/99
Apex Site Management, Inc.	09/27/99
Applecreek Apartments, Broken Arrow, OK	08/31/99
Applecreek Apartments, Sand Springs, OK	08/31/99
Arbors of Central Park	09/03/99
Arbors of Killeen	08/30/99
Arbors Wolf Pen Creek	09/07/99
Arden Realty, Inc.	09/27/99
Aspen Circle Management	09/03/99
Aspen Park Apartments, Wichita, KS	08/31/99
Assn. for Local Telecommunications Services	09/27/99
AT&T Corp.	09/27/99
Barcelona Apartments, Tulsa, OK	08/31/99
Bartley Manor Limited Partnership	09/03/99
Bell Atlantic	09/27/99
Belle Meadows Apartments, Oklahoma City, OK	08/31/99
BellSouth Corporation	09/27/99
Beloit Housing Partners	09/01/99
Berlin Housing Partners Limited Partnership	09/03/99
BlueStar Communications, Inc.	09/27/99
Borgata Apartment Community	08/30/99
Boulder Ridge Apartments, Tulsa, OK	08/31/99
Brandywine Apartments, Lexington, KY	08/31/99
Brandywine Apartments, Tulsa, OK	08/31/99
Brookwood Village Apartments, Oklahoma City, OK	08/31/99
CAIS, Inc.	09/27/99

Capistrano Apartments	08/30/99
Cedar Ridge Apartments	09/03/99
Cellular Telecommunications Industry Assn.	09/02/99
Cellular Telecommunications Industry Assn.	09/27/99
Cimarron Point Apartments, Oklahoma City, OK	08/31/99
Cimarron Trails Apartments, Norman, OK	08/31/99
Cimmarron Apartments, Tulsa, OK	08/31/99
Cinergy Corp.	09/27/99
City of Brea	09/07/99
City of Brea	09/08/99
City of Carmel	09/13/99
City of Cerritos	08/30/99
City of Cerritos	09/09/99
City of Commerce City	09/27/99
City of Davison	08/30/99
City of Davison	09/09/99
City of Littlefield	09/24/99
City of Meadows Place	08/30/99
City of Rosenberg	08/30/99
City of Springfield	09/09/99
City Telecommunication Consultants, Ltd.	09/27/99
Cobblestone Apartments, Tulsa, OK	08/31/99
Coldwell Banker, Commercial	08/30/99
Colonial Manor Apartments	09/03/99
Commerce City	09/27/99
Community Associations Institute et al.	09/27/99
Community Programing Board	09/27/99
Competitive Telecommunications Association	09/27/99
ConAM Management Corporation	09/13/99
Concerned Communities and Organizations	09/27/99
Concord Management Limited, Ltd.	09/13/99
Copper Palms Apartment	08/30/99
Cornerstone Properties et. al.	09/27/99
Cornerstone Properties, et al.	08/30/99
Council Place Apartments, Oklahoma City, OK	08/31/99
Country Hollow Apartments, Tulsa, OK	08/31/99
Covered Bridge Apartments	08/31/99
Covina Court	08/30/99
Crossing II Apartments	08/31/99
Crossings I Apartments	08/31/99
Crown Chase Apartments, Wichita, KS	08/31/99
Crown Point Apartments, Oklahoma City, OK	08/31/99

Delta County, Colorado	08/30/99
Delta County, Colorado	09/03/99
DMC Management Company	08/30/99
Double Tree Apartments, ElPaso, TX	08/31/99
Drucker & Falk	08/30/99
Drucker & Falk, LLC	09/03/99
Duckworth Company Incorporated	09/01/99
Eagle Point Apartments, Tulsa, OK	08/31/99
Edward Rose Associates	09/07/99
Elliot Point	08/30/99
Entergy Services, Inc.	09/27/99
Equestrian on Eastern	08/30/99
First Management Services	08/31/99
First Worthing Company	08/31/99
First Worthing Company	09/02/99
Florida Power & Light Company	09/24/99
Florida Power and Light Co.	09/27/99
Flower Mound	09/01/99
Foothill Apartment Assn.	08/30/99
Fox Acres Apartments	08/30/99
Fox Run Apartments, Wichita, KS	08/31/99
Great West Services, Ltd.	08/31/99
Grouse Run, Oklahoma City, OK	08/31/99
GTE Service Corporation	09/27/99
Hill Park Management	09/03/99
Howard Hughes Corporation	08/30/99
Hudson River Management LLC	09/02/99
Institute of Real Estate Management	09/17/99
Inverness Apartments, Broken Arrow, OK	08/31/99
Island Club	08/30/99
Janesville Housing Partners Limited Partnership	09/01/99
Kennedy Wilson Properties, Ltd	09/07/99
Kensington Park Apts.	08/31/99
Key Management Company	09/14/99
Kimball Tirey & St. John	08/30/99
KOS Management Systems	08/30/99
Lakeside South	08/31/99
Larrymore Organization	09/01/99
Leisure World of Maryland Corporation	08/30/99
Lexington Commons Apartments, Bartlesville, OK	08/31/99
Lincoln Heights Limited Partnership	09/03/99
Local and State Government Advisory Committee	09/03/99

Madison Area Apartment Assn.	08/31/99
Maplewood Apartments	08/30/99
MCI WorldCom, Inc	09/27/99
Meadow Green Apartments, Phoenix, AZ	08/31/99
Medford- Gilman Housing Partners LP	09/03/99
MediaOne Group, Inc.	09/27/99
Meeting House Garden Apartments and Townhouses	08/30/99
Meridian Group, Inc.	09/01/99
Meridian Group, Inc.	09/02/99
Michigan Communities	09/03/99
Mid-Continent Properties	08/30/99
Mission Shadows	08/30/99
Monarch Management & Realty, Inc.	08/31/99
Mountain Village Apartments, ElPaso, TX	08/31/99
NEXTLINK Communications, Inc.	09/27/99
Obervation Point Apartments, Tulsa, OK	08/31/99
Occidental Develm., LTD.	09/07/99
Office of Advocacy, U.S. Small Business Admin.	09/02/99
OpTel, Inc.	09/27/99
P. M. One, Ltd.	08/31/99
Pacific Bay Club	08/30/99
Paige East Associates, Ltd.	08/31/99
Paradise Foothills	08/30/99
Park 86 Apt. Corp.	08/30/99
Parkview Mobile Home Court	09/02/99
Peninsula Housing & Builders Assn.	08/30/99
Personal Communications Industry Association	09/27/99
Picerne Management	08/30/99
Pinehurst Apartments, Oklahoma City, OK	08/31/99
Pinkney Dayton Apartments	09/02/99
Polo Club Apartments, Dallas, TX	08/31/99
Polo Club Apartments, Tulsa, OK	08/31/99
Polo Run Apartments, Tulsa, OK	08/31/99
Princeton Creek Apartments	08/31/99
Quail Hollow Apartments, Tulsa, OK	08/31/99
Quest Comm. Corp.	09/27/99
Qwest Communications Corporation	09/27/99
Racine Housing Partners Limited Partnership	09/03/99
Raintree Apartment, Wichita, KS	08/31/99
Rance King Properties, Inc.	09/08/99
RCN Corporation	09/27/99
Red River Apartments, Tulsa, OK	08/31/99

Rent Stabilization Assn.	08/30/99
Ridge Park Apartments, Tulsa, OK	08/31/99
River Ranch	08/30/99
Riverchase Apartments, Tulsa, OK	08/31/99
Riverpark Apartments, Tulsa, OK	08/31/99
Rosewood Apartment	08/30/99
Royal Arms Apartments, Tulsa, OK	08/31/99
Sagewood Apartments	08/30/99
SBC Communications Inc.	09/27/99
Shadow Ridge Apartments, ElPaso, TX	08/31/99
Shared Communications Services, Inc.	09/27/99
Silver Creek Apartments, Tulsa, OK	08/31/99
Silver Springs Apartments, Wichita, KS	08/31/99
Silverstone Apartments, Tulsa, OK	08/31/99
South Glen Apartments, Tulsa, OK	08/31/99
Southridge Manor Apartments	09/03/99
Statewide Housing Partners Limited Partnership	09/02/99
Sterling House of Lincoln	08/30/99
Sterling Point Apartments	08/30/99
Stillwater Housing Partners Limited Partnership	09/03/99
Sugarberry Apartments, Tulsa, OK	08/31/99
Summerstone Duplexes, Tulsa, OK	08/31/99
Summit Apartments Homes	08/30/99
Sun Wood	08/30/99
Sunchase Apartments, Ridgeland, MS	08/31/99
Sunchase Apartments, Tulsa, OK	08/31/99
Sundance Apartments, Tulsa, OK	08/31/99
Sunset View Limited Partnership	09/03/99
Tammaron Village Apartments, Oklahoma City, OK	08/31/99
Teligent, Inc.	09/27/99
The Commons on Anniston Road	08/31/99
The Electric Utilities Coalition	09/27/99
The Franciscan of Arlington	09/02/99
The Greens of Bedford Apartments, Tulsa, OK	08/31/99
The Lakes Apartments, Tulsa, OK	08/31/99
The Lewiston Apartments, Tulsa, OK	08/31/99
The Links Apartments, Phoenix, AZ	08/31/99
The Lodge on the Lake Apts., Oklahoma City, OK	08/31/99
The National Association of Counties , et al.	09/27/99
The Patriot Apartments, ELPaso, TX	08/31/99
The Phoenix Apartments, ElPaso, TX	08/31/99
The Real Access Alliance	09/27/99

The Remington Apartments, Wichita, KS	08/31/99
The Springs Apartments, Tulsa, OK	08/31/99
The Summit at Sunridge	08/30/99
The Warrington Apartments, Oklahoma City, OK	08/31/99
Tim Pawlenty	09/07/99
Time Warner Cable	09/27/99
Total Service Development, L.L.C.	08/31/99
Town & County Apartments	08/30/99
Town and Country Management Company	08/31/99
Town and Country Management Company	09/01/99
Town and Country Management Company	09/02/99
Town of Flower Mound	09/02/99
Town of Flower Mound Texas	09/07/99
Trails East Apartments, Mesa, AZ	08/31/99
Trammel Crow Residential	09/07/99
Two Harbors Housing Partners Limited Partnership	09/03/99
Twyckeham Apartments	08/31/99
U S West , Inc.	09/27/99
United States Telephone Association	09/27/99
United Telecom Council and Edison Electric Institute	09/27/99
US Small Business Administration	09/10/99
Village Green Companies	08/30/99
Village Green of WI Limited Partnership	09/03/99
Village of Paw Paw	08/30/99
Village of Paw Paw	09/09/99
Village of Roselle	09/01/99
Village of Roselle	09/02/99
Village Square Limited Partnership	09/03/99
Walker's Station Apartments, Oklahoma City, OK	08/31/99
Wampold Companies	08/31/99
Washington Quarters	08/30/99
Waterford Apartments, Tulsa, OK	08/31/99
Weigand-Omega Management, Inc.	08/30/99
Westgate Apartments, Irving, TX	08/31/99
Westminster Management	09/08/99
Windmill Terrace Apartments, Bedford, TX	08/31/99
Windsail Apartments, Tulsa, OK	08/31/99
Windsor At Lakepointe	08/31/99
Windsor At Windermere Place	09/17/99
Windsor At Wood Creek	08/30/99
Windsor Gardens	09/08/99
WINSTAR COMMUNICATIONS, INC.	09/27/99

Wireless Comm. Assn., Int'l.	09/27/99
Wisconsin Apartment Assn.	08/31/99
Yuma County, AZ.	09/17/99

Further Reply comments**Receipt
Date**

Wireless Comm. Assn., Int'l.	10/22/99
Concerned Communities and Organizations	10/28/99

APPENDIX B
Final Rules

New Exclusive Contract Rules

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. A new Subpart X is added to Part 64 of Title 47 entitled:

Prohibition on Exclusive Telecommunications Contracts

2. New Section 64.2300 of Subpart X, Part 64 of Title 47 provides:

Prohibited Agreements. No common carrier shall enter into any contract, written or oral, that would in any way restrict the right of any commercial multiunit premises owner, or any agent or representative thereof, to permit any other common carrier to access and serve commercial tenants on that premises.

3. New Section 64.2301 of Subpart X, Part 64 of Title 47 provides:

Scope of Limitation. For the purposes of this subpart, a multiunit premises is any contiguous area under common ownership or control that contains two or more distinct units. A commercial multiunit premises is any multiunit premises that is predominantly used for non-residential purposes, including for-profit, non-profit, and governmental uses. Nothing in this subpart shall be construed to forbid a common carrier from entering into an exclusive contract to serve only residential customers on any premises.

4. New Section 64.2302 of Subpart X, Part 64 of Title 47 provides:

Effect of State Law or Regulation. This subpart shall not preempt any state law or state regulation that requires a governmental entity to enter into a contract or understanding with a common carrier which would restrict such governmental entity's right to obtain telecommunications service from another common carrier.

Revised OTARD Rules

Subpart S of Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The title of Subpart S, Part 1 of Title 47 is revised to read:

PREEMPTION OF RESTRICTIONS THAT "IMPAIR" THE ABILITY TO RECEIVE TELEVISION BROADCAST SIGNALS, DIRECT BROADCAST SATELLITE SERVICES, OR MULTICHANNEL MULTIPOINT DISTRIBUTION SERVICES OR THE ABILITY TO RECEIVE OR TRANSMIT FIXED WIRELESS COMMUNICATIONS SIGNALS.

2. The title of Section 1.4000 of Subpart S, Part 1 of Title 47 is revised to read:

Restrictions impairing reception of television broadcast signals, direct broadcast satellite services, or multichannel multipoint distribution services and restrictions impairing reception or transmission of fixed wireless communications signals.

3. Section 1.4000 of Subpart S, Part 1 of Title 47 is revised to read:

(a)(1) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulations, or any private covenant, contract provision, lease provision, homeowners' association rule or similar restriction, on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property that impairs the installation, maintenance, or use of:

- (i) An antenna that is (1) used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, and (2) one meter or less in diameter or is located in Alaska;
- (ii) An antenna that is (1) used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed wireless signals other than via satellite, and (2) that is one meter or less in diameter or diagonal measurement;
- (iii) An antenna that is used to receive television broadcast signals; or
- (iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section;

is prohibited to the extent it so impairs, subject to paragraph (b) of this section.

(a)(2) For purposes of this section, "fixed wireless signals" means any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. Fixed wireless signals do not include, among other things, AM radio, FM radio, amateur ("HAM") radio, Citizen's Band (CB) radio, and Digital Audio Radio Service (DARS) signals.

(a)(3) For purposes of this section, a law, regulation, or restriction impairs installation, maintenance, or use of an antenna if it:

- (i) Unreasonably delays or prevents installation, maintenance, or use;
- (ii) Unreasonably increases the cost of installation, maintenance, or use; or
- (iii) Precludes reception or transmission of an acceptable quality signal.

(a)(4) Any fee or cost imposed on a user by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this section except pursuant to paragraph (d) or (e) of this section. In addition, except with respect to restrictions pertaining to safety and historic preservation as described in paragraph (b) of this section, if a proceeding is initiated pursuant to paragraph (d) or (e) of this section, the entity seeking to enforce the antenna restrictions in question must suspend all enforcement efforts pending completion of review. No attorney's fees shall be collected or assessed and no fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction. If a ruling is issued adverse to a user, the user shall be granted at least a 21-day grace period in which to comply with the adverse ruling; and neither a fine nor a penalty may be collected from the user if the user complies with the adverse ruling during this grace period, unless the proponent of the restriction demonstrates, in the same proceeding which resulted in the adverse ruling, that the user's claim in the proceeding was frivolous.

(b) Any restriction otherwise prohibited by paragraph (a) of this section is permitted if:

(1) It is necessary to accomplish a clearly defined, legitimate safety objective that is either stated in the text, preamble, or legislative history of the restriction or described as applying to that restriction in a document that is readily available to antenna users, and would be applied to the extent practicable in a non-discriminatory manner to other appurtenances, devices, or fixtures that are comparable in size and weight and pose a similar or greater safety risk as these antennas and to which local regulation would normally apply; or

(2) It is necessary to preserve a prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion on, the National Register of Historic Places, as set forth in the National Historic Preservation Act of 1966, as amended, 16 U.S.C. § 470, and imposes no greater restrictions on antennas covered by this rule than are imposed on the installation, maintenance, or use of other modern appurtenances, devices, or fixtures that are comparable in size, weight, and appearance to these antennas; and

(3) It is no more burdensome to affected antenna users than is necessary to achieve the objectives described in paragraph (b)(1) or (b) (2) of this section.

(c) In the case of an antenna that is used to transmit fixed wireless signals, the provisions of this section shall apply only if a label is affixed to the antenna that: (1) provides adequate notice regarding potential radiofrequency safety hazards, *e.g.*, information regarding the safe minimum separation distance required between users and transceiver antennas; and (2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310 of this chapter.

(d) Local governments or associations may apply to the Commission for a waiver of this section under § 1.3. Waiver requests must comply with the procedures in paragraphs (f) and (h) of this section and will be put on public notice. The Commission may grant a waiver upon a showing by the applicant of local concerns of a highly specialized or unusual nature. No petition for waiver shall be considered unless it specifies the restriction at issue. Waivers granted in accordance with this section shall not apply to restrictions amended or enacted after the waiver is granted. Any responsive pleadings must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies must be filed within 15 days thereafter.

(e) Parties may petition the Commission for a declaratory ruling under § 1.2, or a court of competent jurisdiction, to determine whether a particular restriction is permissible or prohibited under this section. Petitions to the Commission must comply with the procedures in paragraphs (f) and (h) of this section and will be put on public notice. Any responsive pleadings in a Commission proceeding must be served on all parties and filed within 30 days after release of a public notice that such petition has been filed. Any replies in a Commission proceeding must be served on all parties and filed within 15 days thereafter.

(f) Copies of petitions for declaratory rulings and waivers must be served on interested parties, including parties against whom the petitioner seeks to enforce the restriction or parties whose restrictions the petitioner seeks to prohibit. A certificate of service stating on whom the petition was served must be filed with the petition. In addition, in a Commission proceeding brought by an association or a local government, constructive notice of the proceeding must be given to members of the association or to the citizens under the local government's jurisdiction. In a court proceeding brought by an association, an association must give constructive notice of the proceeding to its members. Where constructive notice is required, the petitioner or plaintiff must file with the Commission or the court overseeing the proceeding a copy of the constructive notice with a statement explaining where the notice was placed and why such placement was reasonable.

(g) In any proceeding regarding the scope or interpretation of any provision of this section, the burden of demonstrating that a particular governmental or nongovernmental restriction complies with this section and does not impair the installation, maintenance, or use of devices used for over-the-air reception of video programming services or devices used to receive or transmit fixed wireless signals shall be on the party that seeks to impose or maintain the restriction.

(h) All allegations of fact contained in petitions and related pleadings before the Commission must be supported by affidavit of a person or persons with actual knowledge thereof. An original and two copies of all petitions and pleadings should be addressed to the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Copies of the petitions and related pleadings will be available for public inspection in the Reference Information Center, Consumer Information Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. Copies will be available for purchase from the Commission's contract copy center, and Commission decisions will be available on the Internet.

Revised Demarcation Point Rules

Part 68 of Title 47 of the Code of Federal Regulations is amended as follows:

The Demarcation Point definition in Section 68.3 is revised to read:

1. Demarcation point: The point of demarcation and/or interconnection between telephone company communications facilities and terminal equipment, protective apparatus or wiring at a subscriber's premises. Carrier-installed facilities at, or constituting, the demarcation point shall consist of wire or a jack conforming to subpart F of part 68 of the Commission's rules. "Premises" as used herein generally means a dwelling unit, other building or a legal unit of real property such as a lot on which a dwelling unit is located, as determined by the telephone company's reasonable and nondiscriminatory standard operating practices. The "minimum point of entry" as used herein shall be either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings. The telephone company's reasonable and nondiscriminatory standard operating practices shall determine which shall apply. The telephone company is not precluded from establishing reasonable classifications of multiunit premises for purposes of determining which shall apply. Multiunit premises include, but are not limited to, residential, commercial, shopping center and campus situations.
 - (a) Single unit installations. For single unit installations existing as of August 13, 1990, and installations installed after that date the demarcation point shall be a point within 30 cm (12 in) of the protector or, where there is no protector, within 30 cm (12 in) of where the telephone wire enters the customer's premises, or as close thereto as practicable.
 - (b) Multiunit installations.
 - (1) In multiunit premises existing as of August 13, 1990, the demarcation point shall be determined in accordance with the local carrier's reasonable and non-discriminatory standard operating practices. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point twelve inches from where the wiring enters the customer's premises, or as close thereto as practicable.
 - (2) In multiunit premises in which wiring is installed, including major additions or rearrangements of wiring existing prior to that date, the telephone company may place the demarcation point at the minimum point of entry (MPOE). If the telephone company does not elect to establish a practice of placing the demarcation point at the minimum point of entry, the multiunit premises owner shall determine the location of the demarcation point or points. The multiunit premises owner shall determine whether there shall be a single demarcation point location for all customers or separate such locations for each customer. Provided, however, that where there are multiple demarcation points within the multiunit premises, a demarcation point for a customer shall not be further inside the customer's premises than a point 30 cm (12 in) from where the wiring enters the customer's premises, or as close thereto as practicable. At the time of installation, the telephone company shall fully inform the premises owner of its options and rights regarding the placement of the demarcation point or points and shall not attempt to unduly influence that decision for the purpose of obstructing competitive entry.

(3) In any multiunit premises where the demarcation point is not already at the MPOE, the telephone company must comply with a request from the premises owner to relocate the demarcation point to the MPOE. The telephone company must negotiate terms in good faith and complete the relocation within forty-five days from said request. Premises owners may file complaints with the Commission for resolution of allegations of bad faith bargaining by telephone companies. *See* 47 U.S.C. Section 208; 47 C.F.R. Sections 1.720-1.736 (1999).

(4) The telephone company shall make available information on the location of the demarcation point within ten business days of a request from the premises owner. If the telephone company does not provide the information within that time, the premises owner may presume the demarcation point to be at the MPOE. Notwithstanding the provisions of 47 U.S.C. § 68.110(c), telephone companies must make this information freely available to the requesting premises owner.

(5) In multiunit premises with more than one customer, the premises owner may adopt a policy restricting a customer's access to wiring on the premises to only that wiring located in the customer's individual unit that serves only that particular customer.

Appendix C

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA),³⁹¹ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking in WT Docket No. 99-217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98, released July 7, 1999 (*Competitive Networks NPRM*).³⁹² The Commission sought written public comment on the proposals in the *Competitive Networks NPRM*, including comment on the IRFA. The comments received are discussed below. In addition, an IRFA was incorporated in the Second Further Notice of Proposed Rulemaking in CC Docket No. 88-57 (*1997 Demarcation Point Order on Reconsideration*).³⁹³ This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.³⁹⁴

A. Need for, and Objectives of, the Rules

In this *Competitive Networks First Report and Order*,³⁹⁵ the Commission furthers its ongoing efforts under the Telecommunications Act of 1996³⁹⁶ to foster competition in local communications markets by implementing measures to ensure that competing telecommunications providers are able to provide services to customers in multiple tenant environments (MTEs). MTEs include apartment buildings, office buildings, office parks, shopping centers, and manufactured housing communities. Based on the extensive record compiled in response to the *Competitive Networks NPRM*, the Commission adopts several measures to remove obstacles to competitive access in this important portion of the telecommunications market. Specifically the Commission: (1) prohibits carriers from entering into contracts in commercial buildings that prevent access by competing carriers; (2) clarifies its demarcation point rules³⁹⁷ governing control of in-building wiring and facilitates exercise of building owner options regarding that wiring; (3) concludes that the access mandated by Section 224 of the Communications Act (the "Pole Attachments Act")³⁹⁸ includes access to poles, ducts, conduits or rights-of-way that are owned

³⁹¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 *et. Seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

³⁹² Promotion of Competitive Networks in Local Telecommunications Markets, *Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99-217, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96-98*, 14 FCC Rcd 12673, 12723-12734 (1999) (*Competitive Networks NPRM*).

³⁹³ Review of Sections 68.104, and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network, *Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking*, CC Docket No. 88-57, 12 FCC Rcd 11897, 11934-39 (1997) (*1997 Demarcation Point Order on Reconsideration*).

³⁹⁴ See 5 U.S.C. § 604.

³⁹⁵ Promotion of Competitive Networks in Local Telecommunications Markets, *First Report and Order*, WT Docket No. 99-217, FCC 00-366 (adopted Oct. 12, 2000) (*Competitive Networks First Report and Order*).

³⁹⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et seq.* (1996 Act). The 1996 Act amended the Communications Act of 1934 (the "Communications Act" or the "Act").

³⁹⁷ See 47 C.F.R. § 68.3.

³⁹⁸ 47 U.S.C. § 224.